



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

707

SPEECHES

BY

OLIVER WENDELL HOLMES, JUNIOR.



BOSTON:
LITTLE, BROWN, AND COMPANY.
1891.

US 13592.75
A

HARVARD COLLEGE
LIBRARY



FROM THE LIBRARY OF
JOSIAH ROYCE



PURCHASED WITH THE
ANDREW PRESTON PEABODY
FUND

7

SPEECHES

BY

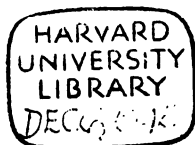
OLIVER WENDELL HOLMES, JUNIOR.



**BOSTON:
LITTLE, BROWN, AND COMPANY.**

1891.

US 13592.75
✓ A



Copyright, 1891,
BY OLIVER WENDELL HOLMES, JR.

UNIVERSITY PRESS:
JOHN WILSON AND SON, CAMBRIDGE.

THESE chance utterances of faith and doubt
are printed for a few friends who will care to
keep them.

CONTENTS.

	PAGE
MEMORIAL DAY	1
<i>May 30, 1884.</i>	
HARVARD COLLEGE IN THE WAR	13
<i>June 25, 1884.</i>	
THE LAW	16
<i>February 5, 1886.</i>	
THE PURITAN	19
<i>February 12, 1886.</i>	
THE PROFESSION OF THE LAW	22
<i>February 17, 1886.</i>	
ON RECEIVING THE DEGREE OF DOCTOR OF LAWS	26
<i>June 30, 1886.</i>	
THE USE OF LAW SCHOOLS	28
<i>November 5, 1886.</i>	
SIDNEY BARTLETT	41
<i>March 23, 1889.</i>	
DANIEL S. RICHARDSON	46
<i>April 15, 1890.</i>	
THE USE OF COLLEGES	49
<i>February 3, 1891.</i>	
WILLIAM ALLEN	52
<i>September 15, 1891.</i>	

MEMORIAL DAY.

AN ADDRESS DELIVERED MAY 30, 1884, AT KEENE,
N. H., BEFORE JOHN SEDGWICK POST No. 4,
GRAND ARMY OF THE REPUBLIC.

Not long ago I heard a young man ask why people still kept up Memorial Day, and it set me thinking of the answer. Not the answer that you and I should give to each other, — not the expression of those feelings that, so long as you and I live, will make this day sacred to memories of love and grief and heroic youth, — but an answer which should command the assent of those who do not share our memories, and in which we of the North and our brethren of the South could join in perfect accord.

So far as this last is concerned, to be sure, there is no trouble. The soldiers who were doing their best to kill one another felt less of personal hostility, I am very certain, than some who were not imperilled by their mutual endeavors. I have heard more than one of those who had been gallant and distinguished officers on the Confederate side say that they had had no such feeling. I know that I and those whom I knew best had not. We believed that it was most desirable that the North should win; we believed in the principle that the Union is indissoluble; we, or many of us at least, also believed that the conflict was inevitable, and that slavery had lasted long enough. But

we equally believed that those who stood against us held just as sacred convictions that were the opposite of ours, and we respected them as every man with a heart must respect those who give all for their belief. The experience of battle soon taught its lesson even to those who came into the field more bitterly disposed. You could not stand up day after day in those indecisive contests where overwhelming victory was impossible because neither side would run as they ought when beaten, without getting at last something of the same brotherhood for the enemy that the north pole of a magnet has for the south, — each working in an opposite sense to the other, but each unable to get along without the other. As it was then, it is now. The soldiers of the war need no explanations; they can join in commemorating a soldier's death with feelings not different in kind, whether he fell toward them or by their side.

7 But Memorial Day may and ought to have a meaning also for those who do not share our memories. When men have instinctively agreed to celebrate an anniversary, it will be found that there is some thought or feeling behind it which is too large to be dependent upon associations alone. The Fourth of July, for instance, has still its serious aspect, although we no longer should think of rejoicing like children that we have escaped from an outgrown control, although we have achieved not only our national but our moral independence and know it far too profoundly to make a talk about it, and although an Englishman can join in the celebration without a scruple. For, stripped of the temporary associations which gave rise to it, it is now the moment when by common consent we pause to become conscious of our national life and to rejoice in it, to recall

what our country has done for each of us, and to ask ourselves what we can do for our country in return.]

[So to the indifferent inquirer who asks why Memorial Day is still kept up we may answer, It celebrates and solemnly reaffirms from year to year a national act of enthusiasm and faith. It embodies in the most impressive form our belief that to act with enthusiasm and faith is the condition of acting greatly. To fight out a war, you must believe something and want something with all your might. So must you do to carry anything else to an end worth reaching. More than that, you must be willing to commit yourself to a course, perhaps a long and hard one, without being able to foresee exactly where you will come out. All that is required of you is that you should go somewhither as hard as ever you can. The rest belongs to fate. One may fall, — at the beginning of the charge or at the top of the earthworks; but in no other way can he reach the rewards of victory.]

When it was felt so deeply as it was on both sides that a man ought to take part in the war unless some conscientious scruple or strong practical reason made it impossible, was that feeling simply the requirement of a local majority that their neighbors should agree with them? I think not: I think the feeling was right, — in the South as in the North. [I think that, as life is action and passion, it is required of a man that he should share the passion and action of his time at peril of being judged not to have lived.]

[If this be so, the use of this day is obvious. It is true that I cannot argue a man into a desire.] If he says to me, Why should I wish to know the secrets of philosophy? Why seek to decipher the hidden laws of creation

that are graven upon the tablets of the rocks, or to unravel the history of civilization that is woven in the tissue of our jurisprudence, or to do any great work, either of speculation or of practical affairs? I cannot answer him; or at least my answer is as little worth making for any effect it will have upon his wishes as if he asked why should I eat this, or drink that. You must begin by wanting to. [But although desire cannot be imparted by argument, it can be by contagion. Feeling begets feeling, and great feeling begets great feeling. We can hardly share the emotions that make this day to us the most sacred day of the year, and embody them in ceremonial pomp, without in some degree imparting them to those who come after us. I believe from the bottom of my heart that our memorial halls and statues and tablets, the tattered flags of our regiments gathered in the State-houses, and this day with its funeral march and decorated graves, are worth more to our young men by way of chastening and inspiration than the monuments of another hundred years of peaceful life could be.]

But even if I am wrong, even if those who come after us are to forget all that we hold dear, and the future is to teach and kindle its children in ways as yet unrevealed, it is enough for us that to us this day is dear and sacred.

Accidents may call up the events of the war. You see a battery of guns go by at a trot, and for a moment you are back at White Oak Swamp, or Antietam, or on the Jerusalem Road. You hear a few shots fired in the distance, and for an instant your heart stops as you say to yourself, The skirmishers are at it, and listen for the long roll of fire from the main line. You meet an old comrade after many years of absence; he recalls the moment when

you were nearly surrounded by the enemy, and again there comes up to you that swift and cunning thinking on which once hung life or freedom, — Shall I stand the best chance if I try the pistol or the sabre on that man who means to stop me? Will he get his carbine free before I reach him, or can I kill him first? These and the thousand other events we have known are called up, I say, by accident, and, apart from accident, they lie forgotten.

But as surely as this day comes round we are in the presence of the dead. For one hour, twice a year at least, — at the regimental dinner, where the ghosts sit at table more numerous than the living, and on this day when we decorate their graves, — the dead come back and live with us.

I see them now, more than I can number, as once I saw them on this earth. They are the same bright figures, or their counterparts, that come also before your eyes; and when I speak of those who were my brothers, the same words describe yours.

I see a fair-haired lad, a lieutenant, and a captain on whom life had begun somewhat to tell, but still young, sitting by the long mess-table in camp before the regiment left the State, and wondering how many of those who gathered in our tent could hope to see the end of what was then beginning. For neither of them was that destiny reserved. I remember, as I awoke from my first long stupor in the hospital after the battle of Ball's Bluff, I heard the doctor say, "He was a beautiful boy," and I knew that one of those two speakers was no more. The other, after passing harmless through all the previous battles, went into Fredericksburg with strange premonition of the end, and there met his fate.

I see another youthful lieutenant as I saw him in the Seven Days, when I looked down the line at Glendale. The officers were at the head of their companies. The advance was beginning. We caught each other's eye and saluted. When next I looked, he was gone.

I see the brother of the last, — the flame of genius and daring in his face, — as he rode before us into the wood of Antietam, out of which came only dead and deadly wounded men. So, a little later, he rode to his death at the head of his cavalry in the Valley.

[In the portraits of some of those who fell in the civil wars of England, Vandyke has fixed on canvas the type of those who stand before my memory. Young and gracious figures, somewhat remote and proud, but with a melancholy and sweet kindness. There is upon their faces the shadow of approaching fate, and the glory of generous acceptance of it. I may say of them, as I once heard it said of two Frenchmen, relics of the *ancien régime*, "They were very gentle. They cared nothing for their lives." High breeding, romantic chivalry — we who have seen these men can never believe that the power of money or the enervation of pleasure has put an end to them. We know that life may still be lifted into poetry and lit with spiritual charm.]

But the men not less, perhaps even more, characteristic of New England, were the Puritans of our day. For the Puritan still lives in New England, thank God! and will live there so long as New England lives and keeps her old renown. New England is not dead yet. She still is mother of a race of conquerors, — stern men, little given to the expression of their feelings, sometimes careless of the graces, but fertile, tenacious, and knowing only duty. Each of you, as I do, thinks of a hundred such that he has

known. I see one — grandson of a hard rider of the Revolution and bearer of his historic name — who was with us at Fair Oaks, and afterwards for five days and nights in front of the enemy the only sleep that he would take was what he could snatch sitting erect in his uniform and resting his back against a hut. He fell at Gettysburg.

His brother, a surgeon, who rode, as our surgeons so often did, wherever the troops would go, I saw kneeling in ministration to a wounded man just in rear of our line at Antietam, his horse's bridle round his arm, — the next moment his ministrations were ended. His senior associate survived all the wounds and perils of the war, but, not yet through with duty as he understood it, fell in helping the helpless poor who were dying of cholera in a Western city.

I see another quiet figure, of virtuous life and silent ways, not much heard of until our left was turned at Petersburg. He was in command of the regiment as he saw our comrades driven in. He threw back his left wing, and the advancing tide of defeat was shattered against his iron wall. He saved an army corps from disaster, and then a round shot ended all for him.

There is one who on this day is always present to my mind. He entered the army at nineteen, a second lieutenant. In the Wilderness, already at the head of his regiment, he fell, using the moment that was left him of life to give all his little fortune to his soldiers. I saw him in camp, on the march, in action. I crossed debatable land with him when we were rejoining the army together. I observed him in every kind of duty, and never in all the time that I knew him did I see him fail to choose that alternative of conduct which was most disagreeable to him.

self. He was indeed a Puritan in all his virtues, without the Puritan austerity ; for, when duty was at an end, he who had been the master and leader became the chosen companion in every pleasure that a man might honestly enjoy. In action he was sublime. His few surviving companions will never forget the awful spectacle of his advance alone with his company in the streets of Fredericksburg. In less than sixty seconds he would become the focus of a hidden and annihilating fire from a semicircle of houses. His first platoon had vanished under it in an instant, ten men falling dead by his side. He had quietly turned back to where the other half of his company was waiting, had given the order, "Second platoon, forward !" and was again moving on, in obedience to superior command, to certain and useless death, when the order he was obeying was countermanded. The end was distant only a few seconds ; but if you had seen him with his indifferent carriage, and sword swinging from his finger like a cane, you never would have suspected that he was doing more than conducting a company drill on the camp parade ground. He was little more than a boy, but the grizzled corps commanders knew and admired him ; and for us, who not only admired, but loved, his death seemed to end a portion of our life also.

There is one grave and commanding presence that you all would recognize, for his life has become a part of our common history. Who does not remember the leader of the assault at the mine of Petersburg ? The solitary horseman in front of Port Hudson, whom a foeman worthy of him bade his soldiers spare, from love and admiration of such gallant bearing ? Who does not still hear the echo of those eloquent lips after the war, teaching reconciliation

and peace? I may not do more than allude to his death, fit ending of his life. All that the world has a right to know has been told by a beloved friend in a book wherein friendship has found no need to exaggerate facts that speak for themselves. I knew him, and I may even say I knew him well; yet, until that book appeared, I had not known the governing motive of his soul. I had admired him as a hero. When I read, I learned to revere him as a saint. His strength was not in honor alone, but in religion; and those who do not share his creed must see that it was on the wings of religious faith that he mounted above even valiant deeds into an empyrean of ideal life.

I have spoken of some of the men who were near to me among others very near and dear, not because their lives have become historic, but because their lives are the type of what every soldier has known and seen in his own company. In the great democracy of self-devotion private and general stand side by side. Unmarshalled save by their own deeds, the armies of the dead sweep before us, "wearing their wounds like stars." It is not because the men whom I have mentioned were my friends that I have spoken of them, but, I repeat, because they are types. I speak of those whom I have seen. But you all have known such; you, too, remember!

It is not of the dead alone that we think on this day. There are those still living whose sex forbade them to offer their lives, but who gave instead their happiness. Which of us has not been lifted above himself by the sight of one of those lovely, lonely women, around whom the wand of sorrow has traced its excluding circle, — set apart, even when surrounded by loving friends who would fain

- bring back joy to their lives? I think of one whom the poor of a great city know as their benefactress and friend. I think of one who has lived not less greatly in the midst of her children, to whom she has taught such lessons as may not be heard elsewhere from mortal lips. The story of these and of their sisters we must pass in reverent silence. All that may be said has been said by one of their own sex: —

“But when the days of golden dreams had perished,
And even despair was powerless to destroy,
Then did I learn how existence could be cherished,
Strengthened, and fed without the aid of joy.

“Then did I check the tears of useless passion,
Weaned my young soul from yearning after thine
Sternly denied its burning wish to hasten
Down to that tomb already more than mine.”

Comrades, some of the associations of this day are not only triumphant, but joyful. Not all of those with whom we once stood shoulder to shoulder — not all of those whom we once loved and revered — are gone. On this day we still meet our companions in the freezing winter bivouacs and in those dreadful summer marches where every faculty of the soul seemed to depart one after another, leaving only a dumb animal power to set the teeth and to persist, — a blind belief that somewhere and at last there was rest and water. On this day, at least, we still meet and rejoice in the closest tie which is possible between men, — a tie which suffering has made indissoluble for better, for worse.

/ When we meet thus, when we do honor to the dead in terms that must sometimes embrace the living, we do not deceive ourselves. We attribute no special merit to a man

for having served when all were serving. We know that, if the armies of our war did anything worth remembering, the credit belongs not mainly to the individuals who did it, but to average human nature. We also know very well that we cannot live in associations with the past alone, and we admit that, if we would be worthy of the past, we must find new fields for action or thought, and make for ourselves new careers.

But, nevertheless, the generation that carried on the war has been set apart by its experience. Through our great good fortune, in our youth our hearts were touched with fire. It was given to us to learn at the outset that life is a profound and passionate thing. While we are permitted to scorn nothing but indifference, and do not pretend to undervalue the worldly rewards of ambition, we have seen with our own eyes, beyond and above the gold fields, the snowy heights of honor, and it is for us to bear the report to those who come after us. But, above all, we have learned that whether a man accepts from Fortune her spade, and will look downward and dig, or from Aspiration her axe and cord, and will scale the ice, the one and only success which it is his to command is to bring to his work a mighty heart. ¹

Such hearts — ah me, how many! — were stilled twenty years ago; and to us who remain behind is left this day of memories. Every year, — in the full tide of spring, at the height of the symphony of flowers and love and life, — there comes a pause, and through the silence we hear the lonely pipe of death. Year after year lovers wandering under the apple boughs and through the clover and deep grass are surprised with sudden tears as they see black veiled figures stealing through the morning to a soldier's

grave. Year after year the comrades of the dead follow, with public honor, procession and commemorative flags and funeral march, — honor and grief from us who stand almost alone, and have seen the best and noblest of our generation pass away.

But grief is not the end of all. I seem to hear the funeral march become a pæan. I see beyond the forest the moving banners of a hidden column. Our dead brothers still live for us, and bid us think of life, not death, — of life to which in their youth they lent the passion and glory of the spring. As I listen, the great chorus of life and joy begins again, and amid the awful orchestra of seen and unseen powers and destinies of good and evil our trumpets sound once more a note of daring, hope, and will.]

HARVARD COLLEGE IN THE WAR.

ANSWER TO A TOAST AT HARVARD UNIVERSITY
COMMENCEMENT, JUNE 25, 1884.

MR. PRESIDENT AND GENTLEMEN OF THE ALUMNI:—

ANOTHER day than this has been consecrated to the memories of the war. On that day we think not of the children of the University or the city, hardly even of the children whom the State has lost, but of a mighty brotherhood whose parent was our common country. To-day the College is the centre of all our feeling, and if we refer to the war it is in connection with the College, and not for its own sake, that we do so. What, then, did the College do to justify our speaking of the war now? She sent a few gentlemen into the field, who died there becomingly. I know of nothing more. The great forces which insured the North success would have been at work even if those men had been absent. Our means of raising money and troops would not have been less, I dare say. The great qualities of the race, too, would still have been there. The greatest qualities, after all, are those of a man, not those of a gentleman, and neither North nor South needed colleges to learn them. And yet—and yet I think we all feel that to us at least the war would seem less beautiful and inspiring if those few

gentlemen had not died as they did. Look at yonder portrait and yonder bust, and tell me if stories such as they commemorate do not add a glory to the bare fact that the strongest legions prevailed. So it has been since wars began. After history has done its best to fix men's thoughts upon strategy and finance, their eyes have turned and rested on some single romantic figure, — some Sidney, some Falkland, some Wolfe, some Montcalm, some Shaw. This is that little touch of the superfluous which is necessary. Necessary as art is necessary, and knowledge which serves no mechanical end. Superfluous only as glory is superfluous, or a bit of red ribbon that a man would die to win.

It has been one merit of Harvard College that it has never quite sunk to believing that its only function was to carry a body of specialists through the first stage of their preparation. About these halls there has always been an aroma of high feeling, not to be found or lost in science or Greek, — not to be fixed, yet all-pervading. And the warrant of Harvard College for writing the names of its dead graduates upon its tablets is not in the mathematics, the chemistry, the political economy, which it taught them, but that in ways not to be discovered, by traditions not to be written down, it helped men of lofty natures to make good their faculties. I hope and I believe that it long will give such help to its children. I hope and I believe that, long after we and our tears for the dead have been forgotten, this monument to their memory still will give such help to generations to whom it is only a symbol, — a symbol of man's destiny and power for duty, but a symbol also of that something more by which duty is swallowed up in generosity, that some-

thing more which led men like Shaw to toss life and hope like a flower before the feet of their country and their cause.

NOTE. — The portrait referred to is that of Colonel ROBERT GOULD SHAW, killed at Fort Wagner, South Carolina, July 18, 1863, in command of the Fifty-fourth Massachusetts Regiment (colored).

The bust is that of Brigadier-General CHARLES RUSSELL LOWELL, died, October 20, 1864, of wounds received at Cedar Creek, Virginia, October 19.

THE LAW.

SUFFOLK BAR ASSOCIATION DINNER,
FEBRUARY 5, 1885.

MR. CHAIRMAN AND GENTLEMEN OF THE BAR:—

THE Court and the Bar are too old acquaintances to speak much to each other of themselves, or of their mutual relations. I hope I may say we are too old friends to need to do it. If you did not believe it already, it would be useless for me to affirm that, in the judges' half of our common work, the will at least is not wanting to do every duty of their noble office; that every interest, every faculty, every energy, almost every waking hour, is filled with their work; that they give their lives to it, more than which they cannot do. But if not of the Bench, shall I speak of the Bar? Shall I ask what a court would be, unaided? The law is made by the Bar, even more than by the Bench; yet do I need to speak of the learning and varied gifts that have given the bar of this State a reputation throughout the whole domain of the common law? I think I need not, nor of its high and scrupulous honor. The world has its fling at lawyers sometimes, but its very denial is an admission. It feels, what I believe to be the truth, that of all secular professions this has the highest standards.

And what a profession it is! No doubt everything is interesting when it is understood and seen in its connec-


tion with the rest of things. Every calling is great when greatly pursued. But what other gives such scope to realize the spontaneous energy of one's soul? In what other does one plunge so deep in the stream of life,—so share its passions, its battles, its despair, its triumphs, both as witness and actor?

But that is not all. What a subject is this in which we are united, — this abstraction called the Law, wherein, as in a magic mirror, we see reflected, not only our own lives, but the lives of all men that have been! When I think on this majestic theme, my eyes dazzle. If we are to speak of the law as our mistress, we who are here know that she is a mistress only to be wooed with sustained and lonely passion, — only to be won by straining all the faculties by which man is likeliest to a god. Those who, having begun the pursuit, turn away uncharmed, do so either because they have not been vouchsafed the sight of her divine figure, or because they have not the heart for so great a struggle. To the lover of the law, how small a thing seem the novelist's tales of the loves and fates of Daphnis and Chloe! How pale a phantom even the Circe of poetry, transforming mankind with intoxicating dreams of fiery ether, and the foam of summer seas, and glowing greensward, and the white arms of women! For him no less a history will suffice than that of the moral life of his race. For him every text that he deciphers, every doubt that he resolves, adds a new feature to the unfolding panorama of man's destiny upon this earth. Nor will his task be done until, by the farthest stretch of human imagination, he has seen as with his eyes the birth and growth of society, and by the farthest stretch of reason he has understood the philosophy of its being. When

I think thus of the law, I see a princess mightier than she who once wrought at Bayeux, eternally weaving into her web dim figures of the ever-lengthening past, — figures too dim to be noticed by the idle, too symbolic to be interpreted except by her pupils, but to the discerning eye disclosing every painful step and every world-shaking contest by which mankind has worked and fought its way from savage isolation to organic social life.

But we who are here know the Law even better in another aspect. We see her daily, not as anthropologists, not as students and philosophers, but as actors in a drama of which she is the providence and overruling power. When I think of the Law as we know her in the court-house and the market, she seems to me a woman sitting by the wayside, beneath whose overshadowing hood every man shall see the countenance of his deserts or needs. The timid and overborne gain heart from her protecting smile. Fair combatants, manfully standing to their rights, see her keeping the lists with the stern and discriminating eye of even justice. The wretch who has defied her most sacred commands, and has thought to creep through ways where she was not, finds that his path ends with her, and beholds beneath her hood the inexorable face of death.

Gentlemen, I shall say no more. This is not the moment for disquisitions. But when for the first time I was called to speak on such an occasion as this, the only thought that could come into my mind, the only feeling that could fill my heart, the only words that could spring to my lips, were a hymn to her in whose name we are met here to-night, — to our mistress, the Law.



THE PURITAN.

250TH ANNIVERSARY OF THE FIRST CHURCH IN
CAMBRIDGE, FEBRUARY 12, 1886.

MR. CHAIRMAN AND GENTLEMEN:—

SIX hundred years ago a knight went forth to fight for the cross in Palestine. He fought his battles, returned, died among his friends, and his effigy, cut in alabaster or cast in bronze, was set upon his tomb in the Temple or the Abbey. Already he was greater than he had been in life. While he lived, hundreds as good as he fell beneath the walls of Ascalon, or sank in the sands of the desert and were forgotten. But in his monument, the knight became the type of chivalry and the church militant. What was particular to him and individual had passed from sight, and the universal alone remained. Six hundred years have gone by, and his history, perhaps his very name, has been forgotten. His cause has ceased to move. The tumultuous tide in which he was an atom is still. And yet to-day he is greater than ever before. He is no longer a man, or even the type of a class of men, however great. He has become a symbol of the whole mysterious past,—of all the dead passion of his race. His monument is the emblem of tradition, the text of national honor, the torch of all high aspiration through all time.

Two hundred and fifty years ago a few devout men founded the First Church of Cambridge. While they

lived, I doubt not, hundreds as good as they fell under Fairfax at Marston Moor, or under Cromwell at Naseby, or lived and died quietly in England and were forgotten. Yet if the only monuments of those founders were mythic bronzes, such as stand upon the Common and the Delta, — if they were only the lichened slates in yonder churchyard, — how much greater are they now than they were in life! Time, the purifier, has burned away what was particular to them and individual, and has left only the type of courage, constancy, devotion, — the august figure of the Puritan.

Time still burns. Perhaps the type of the Puritan must pass away, as that of the Crusader has done. But the founders of this parish are commemorated, not in bronze or alabaster, but in living monuments. One is Harvard College. The other is mightier still. These men and their fellows planted a congregational church, from which grew a democratic state. They planted something mightier even than institutions. Whether they knew it or not, they planted the democratic spirit in the heart of man. It is to them we owe the deepest cause we have to love our country, — that instinct, that spark that makes the American unable to meet his fellow man otherwise than simply as a man, eye to eye, hand to hand, and foot to foot, wrestling naked on the sand. When the citizens of Cambridge forget that they too tread a sacred soil, that Massachusetts also has its traditions, which grow more venerable and inspiring as they fade, — when Harvard College is no longer dedicated to truth, and America to democratic freedom, — then perhaps, but not till then, will the blood of the martyrs be swallowed in the sand, and the Puritan have lived in vain. Until that time

he will grow greater, even after he has vanished from our view.

The political children of Thomas Shepard we surely are. We are not all his spiritual children. New England has welcomed and still welcomes to her harbors many who are not the Puritan's descendants, and his descendants have learned other ways and other thoughts than those in which he lived and for which he was ready to die. I confess that my own interest in those thoughts is chiefly filial; that it seems to me that the great currents of the world's life ran in other channels, and that the future lay in the heads of Bacon and Hobbes and Descartes, rather even than in that of John Milton. I think that the somewhat isolated thread of our intellectual and spiritual life is rejoining the main stream, and that hereafter all countries more and more will draw from common springs.

But even if we are not all of us the spiritual children of Thomas Shepard, even if our mode of expressing our wonder, our awful fear, our abiding trust in face of life and death and the unfathomable world has changed, yet at this day, even now, we New Englanders are still leavened with the Puritan ferment. Our doctrines may have changed, but the cold Puritan passion is still here. And of many a man who now hears me, whether a member of his church or not, it may be said, as it was said of Thomas Shepard by Cotton Mather, "So the character of his daily conversation was a trembling walk with God."

NOTE. — Thomas Shepard was the first minister of the First Church in Cambridge. My grandfather, Rev. Abiel Holmes, was minister of it in his day.

THE PROFESSION OF THE LAW.

CONCLUSION OF A LECTURE DELIVERED TO UNDERGRADUATES OF HARVARD UNIVERSITY,
ON FEBRUARY 17, 1886.

AND now, perhaps, I ought to have done. But I know that some spirit of fire will feel that his main question has not been answered. He will ask, What is all this to my soul? You do not bid me sell my birthright for a mess of pottage; what have you said to show that I can reach my own spiritual possibilities through such a door as this? How can the laborious study of a dry and technical system, the greedy watch for clients and practice of shopkeepers' arts, the mannerless conflicts over often sordid interests, make out a life? Gentlemen, I admit at once that these questions are not futile, that they may prove unanswerable, that they have often seemed to me unanswerable. And yet I believe there is an answer. They are the same questions that meet you in any form of practical life. If a man has the soul of Sancho Panza, the world to him will be Sancho Panza's world; but if he has the soul of an idealist, he will make — I do not say find — his world ideal. Of course, the law is not the place for the artist or the poet. The law is the calling of thinkers. But to those who believe with me that not the least god-like of man's activities is the large survey of causes, that to know is not less than to feel, I say — and I say no

longer with any doubt — that a man may live greatly in the law as well as elsewhere ; that there as well as elsewhere his thought may find its unity in an infinite perspective ; that there as well as elsewhere he may wreak himself upon life, may drink the bitter cup of heroism, may wear his heart out after the unattainable. All that life offers any man from which to start his thinking or his striving is a fact. And if this universe is one universe, if it is so far thinkable that you can pass in reason from one part of it to another, it does not matter very much what that fact is. For every fact leads to every other by the path of the air. Only men do not yet see how, always. And your business as thinkers is to make plainer the way from some thing to the whole of things ; to show the rational connection between your fact and the frame of the universe. If your subject is law, the roads are plain to anthropology, the science of man, to political economy, the theory of legislation, ethics, and thus by several paths to your final view of life. It would be equally true of any subject. The only difference is in the ease of seeing the way. To be master of any branch of knowledge, you must master those which lie next to it ; and thus to know anything you must know all.

Perhaps I speak too much the language of intellectual ambition. I cannot but think that the scope for intellectual, as for physical adventure, is narrowing. I look for a future in which the ideal will be content and dignified acceptance of life, rather than aspiration and the passion for achievement. I see already that surveys and railroads have set limits to our intellectual wildernesses, — that the lion and the bison are disappearing from them, as from Africa and the no longer boundless West. But

that undelightful day which I anticipate has not yet come. The human race has not changed, I imagine, so much between my generation and yours but that you still have the barbaric thirst for conquest, and there is still something left to conquer. There are fields still open for occupation in the law, and there are roads from them that will lead you where you will.

But do not think I am pointing you to flowery paths and beds of roses, — to a place where brilliant results attend your work, which shall be at once easy and new. No result is easy which is worth having. Your education begins when what is called your education is over, — when you no longer are stringing together the pregnant thoughts, the “jewels five words long,” which great men have given their lives to cut from the raw material, but have begun yourselves to work upon the raw material for results which you do not see, cannot predict, and which may be long in coming, — when you take the fact which life offers you for your appointed task. No man has earned the right to intellectual ambition until he has learned to lay his course by a star which he has never seen, — to dig by the divining rod for springs which he may never reach. In saying this, I point to that which will make your study heroic. For I say to you in all sadness of conviction, that to think great thoughts you must be heroes as well as idealists. Only when you have worked alone, — when you have felt around you a black gulf of solitude more isolating than that which surrounds the dying man, and in hope and in despair have trusted to your own unshaken will, — then only will you have achieved. Thus only can you gain the secret isolated joy of the thinker, who knows that, a hundred years after he

is dead and forgotten, men who never heard of him will be moving to the measure of his thought,—the subtle rapture of a postponed power, which the world knows not because it has no external trappings, but which to his prophetic vision is more real than that which commands an army. And if this joy should not be yours, still it is only thus that you can know that you have done what it lay in you to do,—can say that you have lived, and be ready for the end.

ON RECEIVING THE DEGREE OF DOCTOR
OF LAWS.

YALE UNIVERSITY COMMENCEMENT,
JUNE 30, 1886.

MR. PRESIDENT AND GENTLEMEN:—

I KNOW of no mark of honor which this country has to offer that I should value so highly as this which you have conferred upon me. I accept it proudly as an accolade, like the little blow upon the shoulder from the sword of a master of war which in ancient days adjudged that a soldier had won his spurs and pledged his life to decline no combat in the future.

The power of honor to bind men's lives is not less now than it was in the Middle Ages. Now as then it is the breath of our nostrils; it is that for which we live, for which, if need be, we are willing to die. It is that which makes the man whose gift is the power to gain riches sacrifice health and even life to the pursuit. It is that which makes the scholar feel that he cannot afford to be rich.

One would sometimes think, from the speech of young men, that things had changed recently, and that indifference was now the virtue to be cultivated. I never heard any one profess indifference to a boat race. Why should you row a boat race? Why endure long months of pain in preparation for a fierce half-hour that will leave you all

but dead? Does any one ask the question? Is there any one who would not go through all it costs, and more, for the moment when anguish breaks into triumph,—or even for the glory of having nobly lost? Is life less than a boat race? If a man will give all the blood in his body to win the one, will he not spend all the might of his soul to prevail in the other?

I know, Mr. President, that there is a motive above even honor which may govern men's lives. I know that there are some rare spirits who find the inspiration of every moment, the aim of every act, in holiness. I am enough of a Puritan, I think, to conceive the exalted joy of those who look upon themselves only as instruments in the hands of a higher power to work out its designs. But I think that most men do and must reach the same result under the illusion of self-seeking. If the love of honor is a form of that illusion, it is no ignoble one. If it does not lift a man on wings to the sky, at least it carries him above the earth and teaches him those high and secret pathways across the branches of the forest the travellers on which are only less than winged.

Not the least service of this great University and its sister from which I come is, that by their separate teaching and by their mutual rivalry they have fostered that lofty feeling among their graduates. You have done all that a university can do to fan the spark in me. I will try to maintain the honor you have bestowed.

THE USE OF LAW SCHOOLS.

ORATION BEFORE THE HARVARD LAW SCHOOL ASSOCIATION, AT CAMBRIDGE, NOVEMBER 5, 1886, ON THE 250TH ANNIVERSARY OF HARVARD UNIVERSITY.

It is not wonderful that the graduates of the Law School of Harvard College should wish to keep alive their connection with it. About three quarters of a century ago it began with a Chief Justice of the Supreme Court of Massachusetts for its Royall Professor. A little later, one of the most illustrious judges who ever sat on the United States Supreme Bench — Mr. Justice Story — accepted a professorship in it created for him by Nathan Dane. And from that time to this it has had the services of great and famous lawyers ; it has been the source of a large part of the most important legal literature which the country has produced ; it has furnished a world-renowned model in its modes of instruction ; and it has had among its students future chief justices and justices, and leaders of state bars and of the national bar too numerous for me to thrill you with the mention of their names.

It has not taught great lawyers only. Many who have won fame in other fields began their studies here. Sumner and Phillips were among the Bachelors of 1834. The orator whom we shall hear in a day or two appears in the list of 1840 alongside of William Story, of the Chief Justice of this State, and of one of the Associate Justices,

who is himself not less known as a soldier and as an orator than he is as a judge. Perhaps, without revealing family secrets, I may whisper that next Monday's poet also tasted our masculine diet before seeking more easily digested, if not more nutritious, food elsewhere. Enough. Of course we are proud of the Harvard Law School. Of course we love every limb of Harvard College. Of course we rejoice to manifest our brotherhood by the symbol of this Association.


I will say no more for the reasons of our coming together. But by your leave I will say a few words about the use and meaning of law schools, especially of our law school, and about its methods of instruction, as they appear to one who has had some occasion to consider them.

A law school does not undertake to teach success. That combination of tact and will which gives a man immediate prominence among his fellows comes from nature, not from instruction; and if it can be helped at all by advice, such advice is not offered here. It might be expected that I should say, by way of natural antithesis, that what a law school does undertake to teach is law. But I am not ready to say even that, without a qualification. It seems to me that nearly all the education which men can get from others is moral, not intellectual. The main part of intellectual education is not the acquisition of facts, but learning how to make facts live. Culture, in the sense of fruitless knowledge, I for one abhor. The mark of a master is, that facts which before lay scattered in an inorganic mass, when he shoots through them the magnetic current of his thought, leap into an organic order, and live and bear fruit. But you cannot make a

master by teaching. He makes himself by aid of his natural gifts.

Education, other than self-education, lies mainly in the shaping of men's interests and aims. If you convince a man that another way of looking at things is more profound, another form of pleasure more subtle than that to which he has been accustomed, — if you make him really see it, — the very nature of man is such that he will desire the profounder thought and the subtler joy. So I say the business of a law school is not sufficiently described when you merely say that it is to teach law, or to make lawyers. It is to teach law in the grand manner, and to make great lawyers.

Our country needs such teaching very much. I think we should all agree that the passion for equality has passed far beyond the political or even the social sphere. We are not only unwilling to admit that any class or society is better than that in which we move, but our customary attitude towards every one in authority of any kind is that he is only the lucky recipient of honor or salary above the average, which any average man might as well receive as he. When the effervescence of democratic negation extends its workings beyond the abolition of external distinctions of rank to spiritual things, — when the passion for equality is not content with founding social intercourse upon universal human sympathy, and a community of interests in which all may share, but attacks the lines of Nature which establish orders and degrees among the souls of men, — they are not only wrong, but ignobly wrong. Modesty and reverence are no less virtues of freemen than the democratic feeling which will submit neither to arrogance nor to servility.




To inculcate those virtues, to correct the ignoble excess of a noble feeling to which I have referred, I know of no teachers so powerful and persuasive as the little army of specialists. They carry no banners, they beat no drums; but where they are, men learn that bustle and push are not the equals of quiet genius and serene mastery. They compel others who need their help, or who are enlightened by their teaching, to obedience and respect. They set the example themselves; for they furnish in the intellectual world a perfect type of the union of democracy with discipline. They bow to no one who seeks to impose his authority by foreign aid; they hold that science like courage is never beyond the necessity of proof, but must always be ready to prove itself against all challengers. But to one who has shown himself a master, they pay the proud reverence of men who know what valiant combat means, and who reserve the right of combat against their leader even, if he should seem to waver in the service of Truth, their only queen.

In the army of which I speak, the lawyers are not the least important corps. For all lawyers are specialists. Not in the narrow sense in which we sometimes use the word in the profession,—of persons who confine themselves to a particular branch of practice, such as conveyancing or patents,—but specialists who have taken all law to be their province; specialists because they have undertaken to master a special branch of human knowledge,—a branch, I may add, which is more immediately connected with all the highest interests of man than any other which deals with practical affairs.

Lawyers, too, were among the first specialists to be needed and to appear in America. And I believe it

would be hard to exaggerate the goodness of their influence in favor of sane and orderly thinking. But lawyers feel the spirit of the times like other people. They, like others, are forever trying to discover cheap and agreeable substitutes for real things. I fear that the bar has done its full share to exalt that most hateful of American words and ideals, "smartness," as against dignity of moral feeling and profundity of knowledge. It is from within the bar, not from outside, that I have heard the new gospel that learning is out of date, and that the man for the times is no longer the thinker and the scholar, but the smart man, unencumbered with other artillery than the latest edition of the Digest and the latest revision of the Statutes.

The aim of a law school should be, the aim of the Harvard Law School has been, not to make men smart, but to make them wise in their calling, — to start them on a road which will lead them to the abode of the masters. A law school should be at once the workshop and the nursery of specialists in the sense which I have explained. It should obtain for teachers men in each generation who are producing the best work of that generation. Teaching should not stop, but rather should foster, production. The "enthusiasm of the lecture-room," the contagious interest of companionship, should make the students partners in their teachers' work. The ferment of genius in its creative moment is quickly imparted. If a man is great, he makes others believe in greatness; he makes them incapable of mean ideals and easy self-satisfaction. His pupils will accept no substitute for realities; but at the same time they learn that the only coin with which realities can be bought is Life.



Our School has been such a workshop and such a nursery as I describe. What men it has turned out I have hinted already, and do not need to say; what works it has produced is known to all the world. From ardent co-operation of student and teacher have sprung Greenleaf on Evidence, and Stearns on Real Actions, and Story's epoch-making Commentaries, and Parsons on Contracts, and Washburn on Real Property; and, marking a later epoch, Langdell on Contracts and on Equity Pleading, and Ames on Bills and Notes, and Gray on Perpetuities, and I hope we may soon add Thayer on Evidence. You will notice that these books are very different in character from one another, but you will notice also how many of them have this in common, — that they have marked and largely made an epoch.


There are plenty of men nowadays of not a hundredth part of Story's power who could write as good statements of the law as his, or better. And when some mediocre fluent book has been printed, how often have we heard it proclaimed, "Lo, here is a greater than Story!" But if you consider the state of legal literature when Story began to write, and from what wells of learning the discursive streams of his speech were fed, I think you will be inclined to agree with me that he has done more than any other English-speaking man in this century to make the law luminous and easy to understand.

But Story's simple philosophizing has ceased to satisfy men's minds. I think it might be said with safety, that no man of his or of the succeeding generation could have stated the law in a form that deserved to abide, because neither his nor the succeeding generation possessed or could have possessed the historical knowledge, had made

or could have made the analyses of principles, which are necessary before the cardinal doctrines of the law can be known and understood in their precise contours and in their innermost meanings.

The new work is now being done. Under the influence of Germany, science is gradually drawing legal history into its sphere. The facts are being scrutinized by eyes microscopic in intensity and panoramic in scope. At the same time, under the influence of our revived interest in philosophical speculation, a thousand heads are analyzing and generalizing the rules of law and the grounds on which they stand. The law has got to be stated over again; and I venture to say that in fifty years we shall have it in a form of which no man could have dreamed fifty years ago. And now I venture to add my hope and my belief, that, when the day comes which I predict, the Professors of the Harvard Law School will be found to have had a hand in the change not less important than that which Story has had in determining the form of the text-books of the last half-century.

Corresponding to the change which I say is taking place, there has been another change in the mode of teaching. How far the correspondence is conscious, I do not stop to inquire. For whatever reason, the Professors of this School have said to themselves more definitely than ever before, We will not be contented to send forth students with nothing but a rag-bag full of general principles, — a throng of glittering generalities, like a swarm of little bodiless cherubs fluttering at the top of one of Correggio's pictures. They have said that to make a general principle worth anything you must give it a body; you must show in what way and how far it would be



applied actually in an actual system ; you must show how it has gradually emerged as the felt reconciliation of concrete instances no one of which established it in terms. Finally, you must show its historic relations to other principles, often of very different date and origin, and thus set it in the perspective without which its proportions will never be truly judged.

In pursuance of these views there have been substituted for text-books more and more, so far as practicable, those books of cases which were received at first by many with a somewhat contemptuous smile and pitying contrast of the good old days, but which now, after fifteen years, bid fair to revolutionize the teaching both of this country and of England.

I pause for a moment to say what I hope it is scarcely necessary for me to say, — that in thus giving in my adhesion to the present methods of instruction I am not wanting in grateful and appreciative recollection (alas ! it can be only recollection now) of the earlier teachers under whom I studied. In my day the Dean of this School was Professor Parker, the ex-Chief Justice of New Hampshire, who I think was one of the greatest of American judges, and who showed in the chair the same qualities that had made him famous on the bench. His associates were Parsons, almost if not quite a man of genius, and gifted with a power of impressive statement which I do not know that I have ever seen equalled ; and Washburn, who taught us all to realize the meaning of the phrase which I already have quoted from Vangerow, the “enthusiasm of the lecture-room.” He did more for me than the learning of Coke and the logic of Fearne could have done without his kindly ardor.

To return, and to say a word more about the theory on which these books of cases are used. It long has seemed to me a striking circumstance, that the ablest of the agitators for codification, Sir James Stephen, and the originator of the present mode of teaching, Mr. Langdell, start from the same premises to reach seemingly opposite conclusions. The number of legal principles is small, says in effect Sir James Stephen, therefore codify them ; the number of legal principles is small, says Mr. Langdell, therefore they may be taught through the cases which have developed and established them. Well, I think there is much force in Sir James Stephen's argument, if you can find competent men and get them to undertake the task ; and at any rate I am not now going to express an opinion that he is wrong. But I am certain from my own experience that Mr. Langdell is right ; I am certain that when your object is not to make a bouquet of the law for the public, nor to prune and graft it by legislation, but to plant its roots where they will grow, in minds devoted henceforth to that one end, there is no way to be compared to Mr. Langdell's way. Why, look at it simply in the light of human nature. Does not a man remember a concrete instance more vividly than a general principle ? And is not a principle more exactly and intimately grasped as the unexpressed major premise of the half-dozen examples which mark its extent and its limits than it can be in any abstract form of words ? Expressed or unexpressed, is it not better known when you have studied its embryology and the lines of its growth than when you merely see it lying dead before you on the printed page ?

I have referred to my own experience. During the short time that I had the honor of teaching in the School,

it fell to me, among other things, to instruct the first-year men in Torts. With some misgivings I plunged a class of beginners straight into Mr. Ames's collection of cases, and we began to discuss them together in Mr. Langdell's method. The result was better than I even hoped it would be. After a week or two, when the first confusing novelty was over, I found that my class examined the questions proposed with an accuracy of view which they never could have learned from text-books, and which often exceeded that to be found in the text-books. I at least, if no one else, gained a good deal from our daily encounters.

My experience as a judge has confirmed the belief I formed as a professor. Of course a young man cannot try or argue a case as well as one who has had years of experience. Most of you also would probably agree with me that no teaching which a man receives from others at all approaches in importance what he does for himself, and that one who simply has been a docile pupil has got but a very little way. But I do think that in the thoroughness of their training, and in the systematic character of their knowledge, the young men of the present day start better equipped when they begin their practical experience than it was possible for their predecessors to have been. And although no school can boast a monopoly of promising young men, Cambridge, of course, has its full proportion of them at our bar; and I do think that the methods of teaching here bear fruits in their work.

I sometimes hear a wish expressed by the impatient, that the teaching here should be more practical. I remember that a very wise and able man said to a friend

of mine when he was beginning his professional life, "Don't know too much law," and I think we all can imagine cases where the warning would be useful. But a far more useful thing is what was said to me as a student by one no less wise and able, — afterwards my partner and always my friend, — when I was talking as young men do about seeing practice, and all the other things which seemed practical to my inexperience, "The business of a lawyer is to know law." The Professors of this Law School mean to make their students know law. They think the most practical teaching is that which takes their students to the bottom of what they seek to know. They therefore mean to make them master the common law and equity as working systems, and think that when that is accomplished they will have no trouble with the improvements of the last half-century. I believe they are entirely right, not only in the end they aim at, but in the way they take to reach that end.

Yes, this School has been, is, and I hope long will be, a centre where great lawyers perfect their achievements, and from which young men, even more inspired by their example than instructed by their teaching, go forth in their turn, not to imitate what their masters have done, but to live their own lives more freely for the ferment imparted to them here. The men trained in this School may not always be the most knowing in the ways of getting on. The noblest of them must often feel that they are committed to lives of proud dependence, — the dependence of men who command no factitious aids to success, but rely upon unadvertised knowledge and silent devotion; dependence upon finding an appreciation which they cannot seek, but dependence proud in the conviction

that the knowledge to which their lives are consecrated is of things which it concerns the world to know. It is the dependence of abstract thought, of science, of beauty, of poetry and art, of every flower of civilization, upon finding a soil generous enough to support it. If it does not, it must die. But the world needs the flower more than the flower needs life.

I said that a law school ought to teach law in the grand manner; that it had something more to do than simply to teach law. I think we may claim for our School that it has not been wanting in greatness. I once heard a Russian say that in the middle class of Russia there were many specialists; in the upper class there were civilized men. Perhaps in America, for reasons which I have mentioned, we need specialists even more than we do civilized men. Civilized men who are nothing else are a little apt to think that they cannot breathe the American atmosphere. But if a man is a specialist, it is most desirable that he should also be civilized; that he should have laid in the outline of the other sciences, as well as the light and shade of his own; that he should be reasonable, and see things in their proportion. Nay, more, that he should be passionate, as well as reasonable, — that he should be able not only to explain, but to feel; that the ardors of intellectual pursuit should be relieved by the charms of art, should be succeeded by the joy of life become an end in itself.

At Harvard College is realized in some degree the palpitating manifoldness of a truly civilized life. Its aspirations are concealed because they are chastened and instructed; but I believe in my soul that they are not the less noble that they are silent. The golden light of the

University is not confined to the undergraduate department; it is shed over all the schools. He who has once seen it becomes other than he was, forevermore. I have said that the best part of our education is moral. It is the crowning glory of this Law School that it has kindled in many a heart an inextinguishable fire.

NOTE. — The orator referred to on page 28 was James Russell Lowell; the poet was Oliver Wendell Holmes.

SIDNEY BARTLETT.

ANSWER TO RESOLUTIONS OF THE BAR,
BOSTON, MARCH 23, 1889.

GENTLEMEN OF THE BAR:—

YOUR resolutions do not at all exaggerate the feelings which the Bench share with the Bar, and no one, I am sure, more than I, although my knowledge of Mr. Bartlett professionally is of a date which would seem late to some of you. When I came to the bar, Mr. Bartlett already had nearly completed his threescore and ten years, so that of what would have been his whole career, had he been another man, I cannot speak. I have, however, one reminiscence which I cherish, and which takes us back in imagination beyond the oldest memory. I hold in my hand a letter in which he says, "Deacon Spooner died in 1818 aged ninety-four. I saw him and talked with him. *He* talked with Elder Faunce, who talked with the Pilgrims and is said to have pointed out *the* rock."

It is not necessary to go behind what I can remember myself to bear witness to a great career. Between seventy and ninety Mr. Bartlett did work enough for the glory of an advocate's lifetime. I will not stop to mention famous cases, like that of the Merchants' Bank with the Government and the State Bank, or that of the Credit Mobilier, or other cases connected with the Union Pacific, but

will rather repeat what no doubt has been mentioned at your meeting, that the judges of the Supreme Court of the United States pronounced his arguments the ablest which they heard from any man in the country, and that the memory of one of those who thus spoke of him went back to the days of Webster.

Less than two months ago he argued two cases at this bar with almost unabated fire. I suppose that those who were most familiar with his methods would point out as one secret of his success the fact that from the first instant that he was retained he began to shape his case with reference to its remotest ends. He possessed the facts when another would not yet have anticipated a controversy. He took the evidence himself, having in view the principles of law upon which he expected finally to rest his case. You could mark his advent in a cause in the course of which he had been retained merely by reading the record.

But the day when he shone was when he came to argue the questions of law. His way of disregarding ramifications and cutting at the root alone you all remember too well to make description necessary. If I were asked to say what seemed to me his most striking characteristic, I think I should say *style*, — taking that word in a large sense. In that respect he often made me think of the eighteenth century, which sent him down to us. He had that terse and polished subtilty of speech which was most familiar to the world where courtiers and men of fashion taught the *littérateurs* of a later age how to write. He had something of the half-hidden wit which men learned to practise who lived about a court and had to speak in innuendo. He had much of the eighteenth century

definiteness of view which was such an aid to perfection of form.

His manner was no less a study than his language. There was in it a dramatic intensity of interest which made him seem the youngest man in the room when he spoke. And yet you felt at the same time the presence of something older than the oldest;—the detachment which came from ancient experience and intellect undisturbed; the doubt which smiled at action without making it less ardent or sickly o'er the native hue of resolution. His might was written in his face,—that wonderful silver-crowned countenance, glittering yet serene, framed on slanting, deep-cut lines of power,—the imperial face of one who had lived beyond surprises, not unlike that of the great Cæsar as Pontifex Maximus in ironic fulness of knowledge, such as still sometimes is produced in New England. It was enough to look upon him to know that you saw a man who had greatness in him.

I do not share the regrets which some are inclined to feel that Mr. Bartlett confined himself strictly to his profession. I think that he was wise in his ambition, and that his life served public ends. It seems to me that we are apt to take short-sighted views of what constitutes power, and of how a man may serve his fellows. The external and immediate result of an advocate's work is but to win or lose a case. But remotely what the lawyer does is to establish, develop, or illuminate rules which are to govern the conduct of men for centuries; to set in motion principles and influences which shape the thought and action of generations which know not by whose command they move. The man of action has the present, but the thinker controls the future; his is the most subtle, the

4

most far-reaching power. His ambition is the vastest, as it is the most ideal.

It seems to me further that the rule for serving our fellow men, and, so far as we may speculate or hope upon that awful theme, the rule for fulfilling the mysterious ends of the universe—it seems to me that the beginning of self-sacrifice and of holiness—is to do one's task with one's might. If we do that, I think we find that our motives take care of themselves. We find that what may have been begun as a means becomes an end in itself; that self-seeking is forgotten in labors which are the best contribution that we can make to mankind; that our personality is swallowed up in working to ends outside ourselves. I, for one, am glad that our famous leader never sought the more obvious forms of power or public service, and was content to remain to the close Mr. Bartlett of the Suffolk Bar.

When a great tree falls, we are surprised to see how meagre the landscape seems without it. So when a great man dies. We may not have been intimate with him; it is enough that he was within our view; when he is gone, life seems thinner and less interesting. More than that, just as, when the fire swept the ground of our city to the water's edge, we were surprised to see close at hand the ocean, which before was hidden from our vision and our thoughts, the death of this powerful bulwark against time lays open for a moment to our gaze the horizon into which we are to sail so soon. We are another generation. Our tasks are new. We shall carry different freight. The happiest of us hardly can hope for a destiny so complete and fortunate as that which has just been fulfilled. We shall be fortunate enough if we shall have learned to

look into the face of fate and the unknown with a smile like his.


The resolutions of the Bar will be entered upon the records of the Court, and in token of respect to the memory of Mr. Bartlett the Court will now adjourn.

DANIEL S. RICHARDSON.

ANSWER TO RESOLUTIONS OF THE BAR,
LOWELL, APRIL 15, 1890.

GENTLEMEN OF THE BAR:—

OF the leader whom you have lost I must say, *Vidi tantum*, I have seen him, and but little more. While I was at the bar, I never met him, and for the last eight years he has been rather one of the heroes of Valhalla than in the thick of daily conflict. But I have heard enough, before listening to the eloquent and touching words of those who were his friendly rivals—I might almost say I have seen enough—to know something of his character. He was a just, brave, tender, charitable, single-minded man. The men of a younger generation, who were often indebted to him for advice and opportunity freely given, bear witness to his generosity. Their elders, who knew him as an opponent rather than as a benefactor, testify to his unruffled nature, which it was not safe to disturb too nearly. He was a lover of learning, and he had that union of acuteness, judgment, and human feeling that makes a successful lawyer. He was able, wise, and good, and his being so not only brought his reward in success and affectionate regard, but, I am persuaded, did a very great deal to lift up and maintain the character of the bar to which he belonged.



His long career is spanned by the reports between the seventh of Metcalf and one of our latest volumes. It is strange to think of that monotonous series as a record of human lives. I have seen upon the section of an ancient tree the annual rings marked off which grew while the Black Prince was fighting the French, while Shakespeare wrote his plays, while England was a Commonwealth, while a later republic arose over the western waters, and grew so great as to shake the world. And so, I often think, may all our histories be marked off upon the backs of the unbroken series of our reports. As we go down the long line, — at every step, as on the Appian Way, a tomb, — we can see the little space within which Mason rose, grew mighty, and was no more, — or Dexter, or Choate, or Bartlett, or Lord, or Sweetser. Alas! now we must add, or Richardson. And the record which remains of them is but the names of counsel attached to a few cases.

Is that the only record? I think not. Their true monument is the body of our jurisprudence, — that vast cenotaph shaped by the genius of our race, and by powers greater than the greatest individual, yet to which the least may make their contribution and inscribe it with their names. The glory of lawyers, like that of men of science, is more corporate than individual. Our labor is an endless organic process. The organism whose being is recorded and protected by the law is the undying body of society. When I hear that one of the builders has ceased his toil, I do not ask what statue he has placed upon some conspicuous pedestal, but I think of the mighty whole, and say to myself, He has done his part to help the mysterious growth of the world along its inevitable

lines towards its unknown end. I say to myself to-day, that all this wonder is the work of such patient, accurate, keen, just, and fearless spirits as Daniel Richardson.

The memorial will be entered upon the records of the Court as moved, and as a mark of respect to the deceased the Court will now adjourn.

THE USE OF COLLEGES.

SPEECH AT A DINNER OF THE ALUMNI OF YALE
UNIVERSITY, BOSTON, FEBRUARY 3, 1891.

MR. CHAIRMAN AND GENTLEMEN:—

AT every feast it is well to have a skeleton. At every gathering of the elect, the doubting spirit must be allowed to ask his question. In these days all the old assumptions are being retried by the test of actuality, and at a feast in honor of a college, at a gathering of the elect of Yale, the question will arise, What is the use of colleges, after all?

A question not to be answered without reflection, and one which trenches on the doubts sometimes expressed by extremists whether our civilization is a success. We have made famine and pestilence less likely, it is true, and we have multiplied the number of human beings upon the earth; but I own I see no clear advantage in the latter fact; and on the other hand, I doubt whether men generally are as happy as they were in earlier days with all their dangers, and whether the earth has not lost rather than gained in charm.

Nevertheless, we all believe in civilization, and probably most of us believe that colleges are among its fairest flowers. Why? Not surely as collections of schoolmasters teaching others to be schoolmasters, that they

may teach yet others, and so *ad infinitum*; not, I venture to think, mainly as teaching the first steps toward practical success in life, but, if practical knowledge is what we mean by useful knowledge, I would rather say as preserving, discovering, and imparting useless knowledge,—and thus as the concrete image of what makes man man.

Somebody once said to me, “After all, religion is the only interesting thing,” and I think it is true if you take the word a little broadly, and include under it the passionate curiosity as well as the passionate awe which we feel in face of the mystery of the universe. This curiosity is the most human appetite we have. We alone of living beings yearn to get a little nearer and ever a little nearer toward the unseen ocean into which pours the stream of things,—toward the reality of the phantasmagoria which dance before our eyes for threescore years and ten.

This endless aerial pursuit is our fate, as truly as to bear offspring or to toil for bread. This passion is as genuine and self-justifying as any other. The satisfaction of it is as truly an end in itself as self-preservation. I do not believe that the justification of science and philosophy is to be found in improved machinery and good conduct. Science and philosophy are themselves necessities of life. By producing them, civilization sufficiently accounts for itself, if it were not absurd to call the inevitable to account.

Harvard and Yale, as cloisters of philosophy, are keepers of the sacred fire. There are trained the martyrs of the future,—the pale acolytes of science. There are gathered those who believe that thoughts are mightier

.

than things. There are the strongholds of ideals more remote and vast than fortune. There is kept alive the faith which sets men to a task of which they shall not see the end, and which perhaps may be unaccomplished when the last of the race shall die. There is believed the idealist's creed, which even sceptics may share, that the world cannot mean less than the farthest-reaching thought, cannot be less worthy of reverence than the loftiest aspiration, of man, who is but a part of it, but a leaf of the unimaginable tree.

It is because I believe that creed that I hope that the two colleges, to both of which I owe a great debt, long may keep the belief of their high import, and long may urge one another in generous rivalry to be and to do all that universities may be and do.

WILLIAM ALLEN,
ASSOCIATE JUSTICE OF THE SUPREME JUDICIAL COURT OF
MASSACHUSETTS.

ANSWER TO RESOLUTIONS OF THE BAR, GREENFIELD,
SEPTEMBER 15, 1891.

GENTLEMEN OF THE BAR: —

WHEN I heard the sudden news of our associate's death, my second thought was that the Commonwealth had lost a judge not to be replaced, — my first was that I had lost a friend.

The Judges of this Court are thrown so much and so closely together by their work that they are intimate with one another perforce; and to be intimate with William Allen was necessarily to love and admire him. The bar found him very silent upon the bench. He was not so in the consultation room. There he expressed himself freely, and at times, notwithstanding his quiet manner, with the warmth of a hearty and somewhat impulsive temperament, so that there was no question that we knew not only his opinions, but the man behind them.

He seemed to me a typical New Englander, both in character and in ways of thinking; a characteristic product of one of those inland towns which have been our glory, — centres large enough to have a society and a cul-

ture of their own, and, formerly at least, remote enough to have local traditions, and local rather than cosmopolitan standards and responsibilities. As with others whom I have known that were brought up in similar surroundings, his Yankee caution and sound judgment were leavened with a touch of enthusiasm capable of becoming radical at moments, and his cultivation had destroyed rather than fostered his respect for the old merely as such. He was very kind. He was always perfectly considerate and reasonable, as well as warm of feeling. In ill health as in good he took his share of work without a word or hint of what it cost him until he died. He had the subtlety of a Calvinist theologian, and as sound a training in the common law as was to be found in Massachusetts; but he was saved from becoming over technical by his good sense, his humanitarian turn, and the occasional slight touch of radicalism which I have noted. I never felt quite sure that nothing had been overlooked in a statement of facts, until his eye had scrutinized it. In discussion, if you did not agree with him, you always reached an exact issue, and escape in generalities was impossible. I know few qualities which seem to me more desirable in a judge of a court of last resort than this accuracy of thought, and the habit of keeping one's eye on the things for which words stand. Many men, especially as they grow older, resent attempts to push analysis beyond consecrated phrases, or to formulate anew. Such attempts disturb the intellectual rest for which we long. Our ideal is repose, perhaps because our destiny is effort, just as the eye sees green after gazing at the sun. Judge Allen had none of this weakness, but went on without rest to the end.

Great places make great men. The electric current of large affairs turns even common mould to diamond, and traditions of ancient honor impart something of their dignity to those who inherit them. No man of any loftiness of soul could be long a Justice of this Court without rising to his full height. But our dead brother seemed to me too modest to be ambitious for reputation, and to regard his place mainly as an opportunity and a duty. He would have been most pleased, too, I dare say, to slip from it and from life, when his hour came, without remark. He would have preferred not to be celebrated with guns and bells and pealing requiems, the flutter of flags and gleam of steel in the streets, and all the pomp which properly is spent on those who have held power in their right hand. . . . I too am content for him that it should be so, if this neglect of outward show means, even for a chosen few, that their eyes have taken a wider sweep, and have seen that such symbols do not express the vast and shadowy command which a thinker holds. Our prevailing ideals are somewhat coarse. Comparatively few imaginations are educated to aspire beyond money and the immediate forms of power. I have no doubt that vulgar conceptions of life at the top are one of the causes of discontent at the bottom of society. Unless we are to accept decadence as the necessary end of civilization, we should be grateful to all men like William Allen, whose ambition, if it can be called so, looks only to remote and mediated command; who do not ask to say to any one, Go, and he goeth, so long as in truthful imagination they wield, according to their degree, that most subtle and intoxicating authority which controls the future from within by shaping the thoughts and speech of a later time.

Such men are to be honored, not by regiments moving with high heads to martial music, but by a few others, lonely as themselves, walking apart in meditative silence, and dreaming in their turn the dream of spiritual reign.

THE END.





This book should be returned to the Library on or before the last date stamped below.

A fine of five cents a day is incurred by retaining it beyond the specified time.

Please return promptly.

APR 21 '59

US 13592.75
Speeches /
Widener Library

001653363



3 2044 086 383 528